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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY,  
STATE OF UTAH

DOUBLE D ASSOCIATES,  
a Utah General Partnership,

Plaintiff,

vs.

EAST RIVER BOTTOM WATER  
COMPANY, GREGORY KING, THOMAS  
G. ROGERS, STANLEY H. ROBERTS,  
JR., Provo River Water  
Commissioner, and JOHN DOES  
1-10,

Defendants.

COMPLAINT

Civil No. \_\_\_\_\_

COUNT ONE

1. Plaintiff owns shares of the defendant East River Water Bottom Company's capital stock.

2. Defendant East River Bottom Water Company is a corporation of the State of Utah. The defendants Gregory King and Thomas G. Rogers are the duly elected and acting trustees of the defendant Company. The defendant Roberts is the Provo River Water Commissioner. The claim asserted against the defendant Roberts relates only to his duties as the Provo River Water Commissioner. No claim for damages is asserted against him. John Does 1-10 are officers of three irrigation companies which deliver Provo River water to their shareholders.

3. Defendant East River Bottom Water Company is the legal title holder of a water right which right is defined by paragraph 10 of the Findings of Fact in Civil Action 2888 in the Fourth Judicial District in and for Utah County, commonly referred to as the Morse Decree.

4. The Morse Decree provides that the defendant East River Bottom Water Company shall have the right to have specified amounts of water diverted from the Provo River into the defendant's canal during specified periods of time.

5. It, the Morse Decree, fixes a duty for the water, that is, it specifies the amount of land that is to be irrigated with a specified quantity of water.

6. The Morse Decree was entered on May 2, 1921. At that time the defendant East River Bottom Water Company's canal served a rural area. In 1921 defendant's water was utilized to irrigate orchards and fields of alfalfa and grain. Presently, much if not most of the land which was historically irrigated has undergone urban development, and is no longer irrigated with defendant's water.

7. The capital stock owned by plaintiff was acquired from prior owners who sold or developed land owned by them and who were thus rendered unable to put the water right evidenced by their shares to beneficial use.

8. For the past two years, plaintiff has filed temporary

change applications with the State Engineer seeking temporary changes in points of diversion and places of use of the water right evidenced by plaintiff's shares of stock. In those years, the State Engineer has approved plaintiff's applications over the protests of the defendant East River Bottom Water Company.

9. Since the Supreme Court decision in East Jordan Irrigation Company, et al. v. Payson City, et al., 218 Utah Advance Rep. 62, the State Engineer will not accept change applications unless the applications are signed by the affected irrigation company.

10. Plaintiffs caused an application for a temporary change in point of diversion and place of use to be prepared and furnished the application to the defendant Company together with a request that the company execute the change application. The application was mailed by plaintiff to defendant Company on the 26th day of January, 1994. On the 17th day of March, 1994, the defendant Company informed plaintiff that the defendant Company would not sign the application.

11. Plaintiff is informed and believes and therefore alleges that the defendant Company does not know nor does it now possess information from which it can learn the amount of acreage being irrigated with the water which is annually diverted from the Provo River into the defendant Company's canal. It follows from the foregoing that defendant Company does not know if it is complying

with the provision of the Morse Decree which fixes a duty upon the use of the water and prohibits the diversion of water from the Provo River if the water is not put to beneficial use.

12. The ignorance of the defendant East River Bottom Water Company referred to in the preceding paragraph arises from the neglect of the officers of said defendant to properly perform their duties as officers of said defendant.

13. Plaintiff is informed and believes and therefore alleges that the defendant East River Bottom Water Company and its officers have not made any effort to keep a record of the land which was historically irrigated with the defendant's water and which has been retired from irrigation.

14. The lack of the information described in the preceding paragraph disenables the defendant and its officers from complying with requirements of the Morse Decree to not divert water from the Provo River unless such water is put to beneficial use.

15. Plaintiff is informed and believes and therefore alleges that the defendant is diverting much more water from the Provo River than the defendant is entitled to divert from the Provo River. By virtue of the provisions of paragraphs 163 and 164 of the General Provision Concerning Rights and Administration of Civil Action 2888, the Provo River Water Commissioner should be ordered to reduce the diversion of Provo River water to recognize the fact that acreage has been removed from irrigation.

16. Plaintiff is informed and believes and therefore alleges that the trustees of the defendant Company have acted in unison in perpetrating the wrongs of the East River Water Bottom Company of which the plaintiff complains.

17. Unless the defendant East River Water Bottom Company is caused to sign the change application, plaintiff lacks the ability to put the water to which its shares entitle it to receive to beneficial use and thus will lose the right to receive water. As a consequence, plaintiff's stock in the defendant Company will be rendered valueless.

18. The neglect of corporate affairs by the trustees which is alleged above constitutes a breach of a fiduciary obligation owed by the trustees to plaintiff and to other shareholders.

19. Under the rule enunciated in *East Jordan*, supra, it is proper for plaintiff to seek an order from this court directing the defendant to sign the application which plaintiff has furnished to the defendant.

20. Under the rules enunciated in East Jordan, supra, defendant should have foreseen that plaintiff would employ counsel to enforce plaintiff's rights. The requirement for plaintiff to employ counsel is occasioned by the trustees' breach of their fiduciary obligation as set forth above. Defendant should pay plaintiff the attorney fees reasonably incurred in the bringing of, and the prosecution of, this action.

COUNT II

Plaintiff adopts by reference the allegation of paragraphs 1-20 of Count I.

21. The rights which a person can obtain to use water in the State of Utah are fixed by State statutes.

22. The rights of shareholders of East River Bottom Water Company to the use of water awarded that Company by the Morse Decree is a perpetual right provided that the water is put to beneficial use.

23. The Utah State statutes and particularly Title 73-3-33, Utah Code Annotated 1953 as amended, provide a method by which an interested party can preserve a right to use water in the event that a prior use of a water right is no longer practicable or possible.

24. In 1992 plaintiff filed an application for a temporary change in point of diversion and place of use of the water to which its shares in the defendant Company entitle it to receive.

25. In 1992 the State Engineer accepted an application signed by plaintiff as a shareholder in the defendant Company.

26. In 1992, acting in concert with the officers of other irrigation companies, the John Does referred to in the complaint, the defendant Company caused plaintiff's application to be protested.

27. In 1992 the State Engineer granted plaintiff's

application over the protest of the defendant Company and of the protests of the other seven irrigation companies referred to above.

28. In 1993 plaintiff again filed an application for a temporary change in point of diversion and place of use of the water to which the shares in the defendant Company entitle it.

29. In 1993 the defendant Company, acting in concert with the officers of seven other companies, filed protests which were identical to the protest filed in 1992.

30. The State Engineer approved plaintiff's 1993 application over the protests of the defendant Company.

31. Plaintiff has obtained a prospective lessee who has offered to lease the plaintiff's water for the year 1994.

32. The marketplace in Utah County has created a demand for water which can be used for irrigation or for municipal and industrial use. Physical facilities exist which can be employed to deliver the East River Bottom Water Company water to interested lessees or purchasers.

33. The defendants East River Water Bottom Company and King and Rogers have acted in concert and are acting in concert with other officers of the other canal companies in a cooperative effort to render the plaintiff's ownership of its East River Bottom shares of stock worthless.

34. The action of the defendants East River Water Bottom Company and King and Rogers and their co-conspirators constitute a

tortious interference with plaintiff's present and prospective economic relations.

35. The wrongful acts of defendants named in paragraph 35 and of their co-conspirators are interfering with prospective business transactions the consummation of which would benefit the plaintiff in an amount in excess of two hundred and fifty thousand dollars.

36. In addition to the damages alleged in paragraph 33, plaintiff will suffer consequential damages in an amount which is presently uncertain but which will be susceptible of proof at the time of trial.

37. Each of the defendants other than the defendant Roberts could reasonably foresee that plaintiff would have to avail itself of the services of an attorney to bring this action and the defendants are liable for the attorney's fees which their wrongful conduct has caused the plaintiff to incur.

WHEREFORE, plaintiff demands judgment:

(1) For an order directing the defendant Company to sign the application for a temporary change in point of diversion and place of use for the water to which plaintiff's shares entitle it;

(2) For an order directing the Provo River Water Commissioner to reduce the diversion of Provo River water into the defendant Company's canal to reflect the reduced acreage which is



being irrigated with water delivered by the defendant East River Water Bottom Canal Company's canal.

(3) For a judgment against the defendants other than the defendant Roberts and each of them for the loss of rental revenue which their wrongful actions have caused the plaintiff;

(4) For such damages as are proved at trial are occasioned by the wrongful interference of each of the defendants, other than the defendant Roberts, with plaintiff's prospective economic relations;

(5) For such consequential damages as are proved at trial of this action;

(6) For the amount of attorney fees reasonably incurred by plaintiff in the enforcement of this action.

Dated: March 31<sup>st</sup>, 1994.



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